

**STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )**

**BEFORE THE CHIEF PROCUREMENT OFFICER**

**DECISION**

In the Matter of Protest of: )  
)  
Medical Transportation Management, Inc.)

**CASE No. 2012 – 103**

)  
Department of Health & Human Services) )  
Emergency Procurement )  
Non-Emergency Medical Transportation )  
Department of Health & Human Services)

**POSTING DATE: March 5 2012**

**MAILING DATE: March 5 2012**

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Medical Transportation Management, Inc. (MTM).<sup>1</sup> Over a year ago, DHHS solicited three contracts for transporting Medicaid patients to non-emergent healthcare appointments. Together, the contracts cover all counties in South Carolina. Logisticare Solutions, LLC (Logisticare) was awarded the contract for Region 1. DHHS awarded Regions 2 and 3 to American Medical Response (AMR). All three contracts were for a term of three years, and included two additional twelve-month periods, at DHHS' option. In mid-December 2011, AMR advised DHHS it was unable to continue with its contracts, and would terminate its performance two months later. DHHS responded by declaring an emergency and awarding a single contract for Regions 2 and 3 to Logisticare. The duration of the emergency contract is for the remaining term of the AMR agreements, including the option years. MTM protests the extent of competition and the duration of the emergency procurement.

In order to resolve the matter, the CPO conducted a hearing February 22, 2012. Appearing before the CPO were MTM, represented by E. Wade Mullins, III, Esq.; Logisticare, represented by John E. Schmidt, III, and Melissa J. Copeland, Esquires; AMR, represented by M. Elizabeth Crum, Esq.; and DHHS, represented by Deirdra Singleton and Vicki Johnson, Esquires.

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<sup>1</sup> American Medical Response, the incumbent vendor, filed a letter seeking to "intervene or, in the alternative, to protest the term" of the emergency procurement. Before any arguments or witnesses were heard, AMR withdrew its motion and did not participate in the hearing.

## **NATURE OF PROTEST**

MTM's letter of protest is attached and incorporated herein by reference.

## **RELEVANT TIME LINE**

The following dates are relevant to the protest:

1. On September 9, 2010, the Materials Management Office (MMO) issued RFP # 5400002201.
2. On October 25, 2010, MMO opened the proposals received.
3. On December 3, 2010, MMO posted its intent to award of Region 1 to Logisticare and Regions 2 and 3 to AMR. The CPO received four protests of the intent to award.
4. On February 9, 2011, the CPO posted a decision regarding the protests of the MMO solicitation. Two of the protestants appealed the CPO's decision to the Procurement Review Panel (Panel).
5. On May 18, 2011, the Panel posted its decision upholding the CPO decision and the awards of Region 1 to Logisticare and Regions 2 and 3 to AMR. (Case No. 2011-1 and 2011-2, In re: Protests of Logisticare Solutions, LLC, and Medical Transportation Management, Inc., Adrian Novit & Sonny Williams; Appeals of Logisticare Solutions, LLC, and Medical Transportation Management, Inc.)<sup>2</sup>
6. On May 25, 2011, MMO reinstated the awards to Logisticare and AMR.
7. On November 21, 2011, AMR submitted a request for approval to MMO of a change order in the amount of \$25 million to enable AMR to meet its contract requirements.
8. On December 13, 2011, MMO denied AMR's requested change order.
9. On December 14, 2011, AMR notified DHHS that AMR intended to begin a transition resulting in the cessation of AMR provision of non-emergency medical transportation brokerage services in Regions 2 and 3 effective February 20, 2012. This date was subsequently changed to February 21, 2012, due to the State holiday on February 20.
10. On December 16, 2011, DHHS declared an emergency and awarded Regions 2 and 3 to Logisticare based upon Logisticare's proposal to MMO opened October 25, 2010.
11. On January 26, 2012, the CPO received the protest of MTM.

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<sup>2</sup> MTM appealed the Panel's decision to the Circuit Court, which has not addressed the matter at this date. That appeal regards the contract awarded to AMR, which is now ended.

12. On February 7, 2012, the CPO received the motion to intervene or, in the alternative, to protest, from AMR.

13. On February 22, 2012, the CPO conducted a hearing in the matter of the DHHS emergency.

### **MOTIONS TO DISMISS**

DHHS, joined by Logisticare, offered several motions asking that the CPO dismiss the protests of MTM arguing in part:

1. There can be no protest of an executed, final contract, and that is what we have in this instance.

There is simply no provision under the Code that affords persons the right to contest a contract that has already been executed, put in place and in performance.<sup>3</sup>

2. The protests that have been submitted do not fall within the remedies permitted under the Code.<sup>4</sup>

In addition to these grounds, Logisticare also argued that the CPO lacked jurisdiction because: (1) the protest was untimely filed, (2) MTM was not an actual bidder for the emergency, and (3) the award of an emergency procurement was not subject to protest; only audit review.

The Code clearly provides for protests to contest a contract that has already been executed, put in place and in performance. MTM not only has standing, it submitted its protest in a timely manner. The Procurement Review Panel has asserted jurisdiction is numerous cases involving emergency procurements. (1988-6, In Re: Protest of Homer L. Spires; Case No. 1995-11, In Re: Protest of Morganti National, Appeal of Morganti National; 2002-3, In Re: Protest of Business Systems of South Carolina, Appeal by American Specialty Office Products, Inc.; Case No. 2003-3, In Re: Protest of

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<sup>3</sup> DHHS also argued there could be no stay of an executed contract. The stay provided in Section 11-35-4210(7) does not apply to an executed contract; rather, it prevents the State from proceeding with the process of soliciting and awarding a contract.

<sup>4</sup> DHHS also objected to AMR's motion, arguing that, having abandoned the contract to provide NEMT Brokerage Services to Regions 2 and 3 under the prevailing circumstances, AMR simply does not have standing as a responsible

American Southern Insurance Company, Appeal of American Southern Insurance Company.) In fact, the Panel has announced that it will subject those contracts to very close scrutiny. (Morganti, ante; Homer L. Spires, ante.) The motions are denied.

### **STATEMENT OF FACTS**

Following a contentious solicitation that engendered four protests, two panel appeals and a petition for circuit court review, MMO, as agent for DHHS, awarded two of three contracts for Medicaid transportation to AMR. Less than seven months later AMR announced it would terminate performance under its contracts. It essentially gave DHHS sixty days to find a replacement vendor and get that replacement operational. Anthony E. Keck is director of DHHS. He was faced with a number of choices, none of them good ones. He could pay more money to AMR to stay on the job. He could reset the procurement process and immediately re-solicit proposals to replace AMR. He could enter a short-term agreement with a replacement vendor, knowing that vendor would set a price reflecting the uncertainty of amortizing its start-up expenses. What Director Keck could not do under any circumstances was allow any lapse in the transportation services provided to his agency's Medicaid clients.

Faced with these choices, and against the backdrop of his mandate to assure continued services, Director Keck made a decision. He declared an emergency. He negotiated with the vendor who had been scored second behind AMR in the earlier solicitation, and who was already the incumbent for the third region in the state. He entered into a contract with that vendor, Logisticare, for the time remaining in the agreements AMR had abandoned. In this protest, MTM challenges Director Keck's decision. It asks the CPO to find that DHHS should have involved more competition—specifically, MTM—in the

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vendor to contest, or participate in, any process connected with its replacement under the emergency it caused by its own decision to stop performing its contract. Since AMR withdrew its motion, the CPO does not need to rule on this issue.

emergency procurement process. And it asserts that the agency should not have engaged Logisticare for the entire term remaining in the AMR contracts.

Medicaid is a publicly-funded insurance program that pays for some low-income people's health care needs. Medicaid recipients must be pregnant, elderly, disabled, or responsible for childcare; and they must meet strict income rules.<sup>5</sup> In South Carolina the Medicaid program is administered by the state's Department of Health and Human Services (DHHS). Nearly one in four South Carolinians are covered by Medicaid, including forty percent of the children in this state. Thirteen percent of Medicaid recipients here are disabled adults. Another nine percent are elderly. Together, these three demographics include nearly 800,000 of our neighbors across the state.<sup>6</sup> They are clearly among the most vulnerable in our population.

DHHS also pays to transport Medicaid recipients to their medical appointments—things like doctor visits, kidney dialysis, and mental health treatments. Although this care may be acute, it is not considered emergent. The overall scheme is called Non-Emergency Medical Transportation, or NEMT. Nearly six years ago DHHS changed its NEMT model to a “broker” system. It divided the state into three geographic regions and awards a contract for each region to a designated broker. Each broker is responsible to contract with transportation providers in its respective region. Medicaid clients in each region are given a toll-free telephone number to contact. The number rings in a call center established by the regional broker, which in turn dispatches a transportation provider to the client.

NEMT potentially touches the lives of over one million Medicaid clients across the state. It provides work, directly or indirectly, to scores of transportation companies and hundreds of their employees. Because of its reach, the transportation program attracts attention from the executive and

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<sup>5</sup> Pamphlet, “South Carolina Healthy Connections,” SC DHHS Medicaid Handbook, <http://www.scdhhs.gov/internet/pdf/Medicaid%20Handbook.pdf>

legislative branches of state government. DHHS solicits broker contract for three year terms, renewable at the agency's option for two additional years. Each NEMT broker contract is worth millions of dollars annually. The competition for these contracts is ferocious. In 2006, the first year DHHS solicited proposals for regional brokers, there were two protests, two appeals to the Procurement Review Panel, and a petition to circuit court for review. Proposals for the current contracts were initially solicited in September 2010. On behalf of DHHS, MMO posted its intent to award in December 2010. Four parties protested the awards, including MTM and Logisticare. The Panel heard an appeal and affirmed the CPO in May 2011. Pursuant to the Procurement Code, award of the regional contracts was stayed until the Panel's decision. DHHS awarded contracts for Regions 2 and 3 to AMR in May 2011, eight months after the original solicitation. There is currently pending an appeal to circuit court from the Panel's decision.

Faced with an imminent threat, an urgent need for transportation brokerage services in Regions 2 and 3, and a scant 60 days to find a replacement broker and initiate transportation services, Director Keck declared the situation an emergency on December 16, 2011. His written justification of the emergency makes the following determinations:

- Logisticare was “the only company who would be able to accomplish an expedited implementation to prevent any gap in the provision of transportation services”
- “Logisticare formerly provided services for all but three of the counties in Regions 2 and 3 in the previous contract, so Logisticare has knowledge of and many relationships with transportation providers in the area to enable Logisticare to build an adequate network quickly”

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<sup>6</sup> SCDHHS Publication, “South Carolina Enrollment and Expenditure Data” for fiscal year 2011, <http://www.scdhhs.gov/openpublic/ResourceLibrary/countyleveldata/11/State%20Medicaid%20Fast%20Facts-%20SFY11.pdf>

- “As the current operator of Region 1, [Logisticare] also already has approved policies and procedures and transportation provider contracts that can be expanded into Regions 2 and 3, as they have been confirmed by DHHS previously to comply with the terms of the procurement”
- “Logisticare is currently operating a call center for Region 1 that can be expanded to handle the calls for Regions 2 and 3”
- “Logisticare’s current presence and past experience make Logisticare uniquely qualified and capable of meeting the expedited implementation period required to meet the final operation date of AMR.” (Ex. 5)

DHHS reviewed the competitive proposals received by MMO on October 25, 2010, in response to the original solicitation. It contacted Logisticare about the two regional contracts. Logisticare not only offered to hold its pricing from fourteen months earlier, but also agreed to certain “consolidation savings” which reduced those prices from the October 2010 proposal. DHHS entered into a contract with Logisticare one week later for Region 2 and Region 3 in the amounts of Logisticare’s offer.

### **PROTEST ISSUES**

Regarding authority to declare an emergency, the Consolidated Procurement Code (the Code) reads:

Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. (11-35-1270)

The CPO finds that Director Keck, as Executive Director of DHHS, is authorized as the “head of the purchasing agency” to declare an emergency. Further, the CPO finds that his “emergency Procurement

Justification” qualifies as a written determination, as required by the Code. MTM did not protest the legality of the emergency. In fact, MTM wrote in its protest letter that the emergency is “both expected and reasonable.” Thus the only issue to be determined is whether or not DHHS met the requirements of the Code and Regulations in the award of the contracts to Logisticare under the emergency determination. The grounds of protest are: (1) the competition sought by DHHS in the award of its emergency contract to Logisticare, and (2) the duration of the emergency contract.

### **STANDARD OF REVIEW**

In consideration of the sensitive, urgent nature of an emergency situation, the Code grants authorized officials great deference in the execution of emergency determinations. Regarding an emergency determination, the Code reads, “The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law . . . Section 11-35-1570 (Emergency Procurement).” (11-35-2410, Finality of Determinations) Normally, in a protest, a protestant must prove its case by the preponderance of the evidence. In this case, MTM must also prove that Director Keck’s determination was a clearly erroneous, arbitrary, capricious, or contrary to law application of the Code’s and regulations’ requirements for an emergency procurement.

### **CONCLUSIONS OF LAW**

#### **Protest Issue (1): The competition sought by DHHS in the award of its emergency contract to Logisticare**

Regarding the level of competition required of governmental bodies after an emergency declaration, the Code’s regulations require:



The provisions of this Regulation apply to every procurement made under emergency conditions that will not permit other source selection methods to be used. (19-445.2110.A. Application)

Any governmental body may make emergency procurements when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by either the head of a purchasing agency or his designee or the Chief Procurement Officer shall be obtained prior to the procurement. (19-445.2110.D. Conditions)

Clearly, the regulation authorizes that a procurement under emergency conditions may be made without the full application of the Code's competition requirements.

Relevant to the Code's requirement that, even under emergency conditions, agencies solicit competition, the regulations require:

The procedure used shall be selected to assure that the required supplies, services, information technology, or construction items are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained. (19-445.2110.E. Section of Method of Procurement)

DHHS relied upon the competitive process and the evaluation of proposals received by MMO for the original solicitation. MMO opened the proposals October 25, 2010.

MMO's RFP asked offerors to offer proposals for a fixed initial term of three years plus two one-year optional years. DHHS sought no additional competition choosing instead to rely upon the results of MMO's competitive process. The price proposals for the initial guaranteed term of three years for Regions 2 and 3, at issue here, were as follows:

<u>Offeror</u>	<u>Region 2</u>	<u>Region 3</u>
AMR	\$47,579,510	\$47,883,537
Logisticare	61,669,435	67,825,380
MTM	66,412,437	81,463,614
Southeastrans	79,238,701	89,822,739

It is important to consider that this procurement was processed as a request for competitive proposals (RFP) under S.C. Code section 11-35-1530. Under the Consolidated Procurement Code (Code), the State is authorized to consider price and other relevant evaluation criteria in determining award. Regarding award of an RFP, the Code reads, in relevant part, "Award must be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the State, taking into consideration price and the evaluation factors set forth in the request for proposals." (11-35-1530(9)). The evaluation factors authorized by this RFP were: Technical Approach – 45 points, Price – 30 points, and Corporate Background, Experience and Approach to Staffing – 25 points. Price was not the only determining factor.

MMO and the evaluators evaluated the proposals for Regions 2 and 3 and scored them as follows:

#### Region 2

<u>Offeror</u>	<u>Composite Score</u>
AMR	437
Logisticare	422.75
MTM	370.45
Southeastrans	350.05

#### Region 3

<u>Offeror</u>	<u>Composite Score</u>
AMR	436
Logisticare	413.9
MTM	362.15
Southeastrans	347.95

AMR was awarded Regions 2 and 3 based upon evaluation of all criteria stated in the RFP by the evaluators, as required by the Code. For each region, Logisticare was scored second with MTM scored third.

At issue is whether or not DHHS met the requirements of the regulations that “such competition as is practicable shall be obtained.” Clearly, the Code recognizes that the nature and urgency of each emergency will dictate the solicitation of competition. MTM argued that DHHS should have re-solicited competition or at least allowed the original competitors to offer proposals. DHHS responded that its actions were reasonable in light of the limited time, 60 days, AMR allowed before it would cease transportation services for Regions 2 and 3 noting that the original request for proposals allowed the awarded contractors 90 days to begin transportation services which proved to be insufficient. Additionally, DHHS argued that it had no reason to believe the remaining offerors from the previous solicitation, MTM and Southeastrans would lower their price proposals noting that Logisticare’s price for Regions 2 and 3 was \$18 million less than MTM’s, the third ranked offeror.

At first blush these facts seem to compel finding insufficient competition. DHHS offered no public notice of the emergency procurement (none is required); it negotiated with one vendor, not all previous offerors, and, in fact, didn’t even call other vendors before entering a contract for 29 months with a total value of over \$100 million, plus two additional option years (if HHS exercises options the value of the contracts exceeds \$200 million). However, the nature of the services involved in this procurement, and the context against which it was made, make this situation extraordinary.

The history of the state’s procurements of Medicaid transportation is that every procurement for NEMT has engendered protests and appeals. MMO’s procurement for the original contract took almost eight months from publication to award. Subsequent to award, the solicitation allowed the awarded contractors 90 days to start transportation brokerage services. History indicates that any resolicitation

and implementation, even when conducted under an emergency determination, would have taken longer than sixty days and could well have resulted in a period of no transportation services for Medicaid recipients.

The procurement is particularly sensitive. Many Medicaid recipients do not possess the means to travel to medical providers in order to receive their medical benefits. The transportation here is often to essential health providers: pediatric care, kidney dialysis, and mental health treatments. Interruption of transportation services cannot be tolerated.

According to the evaluation scores for Regions 2 and 3, Logisticare was ranked second only to AMR as the most advantageous offeror. With AMR's exit from Regions 2 and 3, Logisticare became the offeror ranked highest during the original evaluation. Further, of the remaining offerors, Logisticare offered the best price by far. For Region 2, Logisticare's price was for the initial three year term was \$4,743,002 lower than MTM's and \$17,569,266 lower than Southeastrans'. For Region 3, Logisticare's price was \$13,638,234 lower than MTM's and \$21,997,359 lower than Southeastrans'. DHHS argued that it had no reason to expect MTM to lower its prices for the three year initial period for Regions 2 and 3 by \$18 million. The CPO agrees.

In its emergency determination, DHHS wrote, "As for adequate competition, SCDHHS had only recently gone through the procurement process to award these contracts with contracts being awarded approximately seven months ago. In that procurement Logisticare was second in the ranking of brokers in Regions 2 and 3. In fact had AMR's proposal included the amounts requested in the Change Order, Logisticare would have been awarded Regions 2 and 3 in the initial procurement." (Ex. 5) MTM offered no testimony that it could have offered the same services in the wake of the emergency for a lower price.

If Director Keck had the luxury of reflection, he may have proceeded differently. The CPO does not encourage agencies to enter contracts of this size without benefit of the competitive procedures described in the Code. It does not suggest that any default of a performance will justify resorting to a negotiated solution under the emergency procurement statute and regulations. The circumstances Director Keck faced when AMR terminated its contracts, however, were extraordinary. He took decisive action under exigent conditions. The CPO cannot say that his decision was clearly erroneous, arbitrary, capricious, or contrary to law.

**Protest Issue No. (2): The duration of the emergency contract**

Regarding the duration of a contract awarded as an emergency, the regulations require, “Emergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency.” (19-445.2110.C. Limitations) DHHS awarded its contract to Logisticare on December 23, 2011 for the remainder of the fixed term of the original solicitation. The operational period is February 21, 2012 to May 25, 2014, plus two additional one-year extensions should DHHS choose to exercise them for the additional period of May 26, 2014 to May 25, 2016 for a total potential term of February 21, 2012 – May 25, 2016. MTM argued that DHHS’s emergency contracts should have been limited to the time necessary to resolicit proposals for the services. At issue here is whether or not the term of DHHS’ emergency contract met the requirement of the Code that an emergency be limited to the services necessary to meet the emergency.

DHHS offered several justifications for awarding the emergency contract for a twenty-nine month term. First, it wanted to avoid any interruption in service occasioned by the re-procurement process. AMR allowed only sixty days for DHHS to have a replacement contractor up and running. The risk of any lapse in service is intolerable. DHHS knew it would need to award a longer contract than usual to avoid any interruption in transportation services.

Second, it is difficult to gauge just how long the emergency procurement should be. Originally, this solicitation spanned eight months from advertisement to award. Because of protests and appeals the actual commencement date was delayed even more. Currently, it has been seventeen months since DHHS advertised the solicitation and there is still an appeal pending in circuit court. It is reasonable to expect that any re-procurement would take at least as long. Given the difficulty of forecasting the time required to solicit competitive proposals and re-award these contracts, the CPO cannot say what period, short of the twenty-nine months actually awarded, would be reasonable to re-solicit proposals, make an award, and get a contractor into operation.

Third, vendor pricing for these contracts is based in large part on the ability to amortize start-up costs over the term of the contract. Logisticare offered testimony that its pricing was based on the original three-year contract term. If it had been offered a shorter performance period it could not hold those prices. MTM offered no evidence rebutting this testimony. DHHS had to balance the possible benefit of a shorter term against the certainty that a shorter term would mean substantially higher pricing.

Next, DHHS indicated it wished to keep the contracts for all three regions “synchronized.” That is, it wanted to be able to re-solicit all three at the same time in the future. This desire is related to the imperative to avoid service interruptions, since each re-solicitation risks a break in service.

Finally, DHHS considered the impact changes in brokers has on the end-user. Each time a new broker enters the picture, there are changes in the way services are delivered. There may be differences in how soon, or where, transport is provided. There may be a different telephone number for clients to call. There may be interruptions attendant to a new contractor starting up.

In light of these concerns DHHS chose to award the emergency procurement for the full term of the original AMR contracts. The CPO finds an emergency contract for twenty-nine months is near the

limits for such procurements. In light of the justifications DHHS offered, though and against the background described elsewhere in this order, The CPO cannot say the decision to contract for that time was clearly erroneous, arbitrary, capricious, or contrary to law.

The two contract option years, however, are another story. The agency's logic, already stretched at twenty-nine months, fails beyond that point. At some point these contracts must be re-solicited. The fact that the next procurement promises to be an ordeal is not a sufficient justification for delaying that process for another two years. At the end of twenty-nine months, vendors who based their pricing on the original contract term should have their costs fully amortized. All three regions will then be "in sync." And the risk of service interruption will be no more then than it would be two years later. In short, there is no reason to include the two option years in the emergency procurement. Doing so makes the emergency contract exceed that necessary to meet the emergency.

### **DETERMINATION**

For the aforementioned reasons, and effective at 5:00 PM on Friday, March 9, 2012, the protest is denied *nisi*, i.e., unless DHHS has failed to both:

- (i) execute, pursuant to a clause providing for termination for convenience, a document terminating its emergency contract with Logisticare effective at the end of the contract's initial term (May 25, 2014), thus eliminating any contractual rights DHHS may have to exercise the two optional one-years terms (May 26, 2014 to May 25, 2016), and
- (ii) deliver that termination document such that it is received by Logisticare, the CPO, and MTM prior to 5:00 PM on Friday, March 9, 2012.

In the event DHHS fails to perform these actions by the deadline provided, this Decision will remain interlocutory and the CPO will issue a supplementary order to provide for the appropriate remedy.

Voight Shealy

R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

Mar. 5, 2012  
Date

Columbia, S.C.



**STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW**  
*Protest Appeal Notice (Revised July 2011)*

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

**FILE BY CLOSE OF BUSINESS:** Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

**FILING FEE:** Pursuant to Proviso 83.1 of the General Appropriations Act for Fiscal Year 2011-2012, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410...Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

**LEGAL REPRESENTATION:** In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

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January 26, 2012

## VIA ELECTRONIC MAIL AND HAND DELIVERY

Voight Shealy

Chief Procurement Officer

Materials Management Office

1201 Main Street

Columbia, SC 29201

RECEIVED JAN 26 2012

MMO OFFICE

**RE: Protest of Emergency Procurement to Logisticare Solutions, LLC for Regions 2 and 3 of Solicitation: 5400002201 (Non-Emergency Medical Transportation Services)  
Our File No. 7-1628.108**

Dear Mr. Shealy:

This firm represents Medical Transportation Management, Inc. ("MTM") in connection with the above-referenced protest. On behalf of MTM, we hereby protest the award of Regions 2 and 3 of Solicitation 5400002201, formerly awarded to American Medical Resources, Inc. ("AMR"), to Logisticare Solutions, LLC ("Logisticare") on an emergency basis. The grounds for this protest are as follows:

### **FACTUAL ISSUES AND PROCEDURAL BACKGROUND**

The Materials Management Office ("MMO"), on behalf of the Department of Health and Humans Services ("DHHS") issued specifications for Solicitation No. 5400002201 (the "RFP"). The solicitation sought proposals on behalf of DHHS for a broker to provide non-emergency medical transportation ("NEMT") services for eligible Medicaid recipients. South Carolina's NEMT program provides transportation for eligible Medicaid recipients to medical care and services which are covered by Medicaid. The State is divided into three distinct regions. In each region, a single qualified broker would be responsible for administering the core components of the NEMT program. The RFP sought proposals to award separate contracts for all three regions.

The solicitation required prospective brokers to submit an initial technical proposal and a separate price proposal. The technical proposals were to be judged for responsiveness and scored and evaluated by an evaluation panel pursuant to the published criteria in the RFP. Likewise, the price proposals were to be judged for responsiveness and scored by MMO according to published criteria in the RFP.

MMO determined that Logisticare was the highest ranked Offeror for Region 1 and that AMR was the highest ranked Offeror for Regions 2 and 3. On December 3, 2010, MMO issued

a Notice of Intent to Award the NEMT contract for Region 1 to Logisticare and a Notice of Intent to Award the NEMT contracts for Regions 2 and 3 to AMR. All of the contracts have an initial contract period of three years with two option years for a maximum contract period of five years.

On December 10, 2010, MTM filed its initial protest of the Intent to Award for Regions 1, 2, and 3. MTM supplemented its initial protest of all Regions on December 20, 2010. Logisticare protested the Intent to Award for Regions 2 and 3 on December 13, 2010, which it supplemented on December 17, 2010.<sup>1</sup> The Chief Procurement Officer for Supplies and Services (the "CPO") held a two-day hearing on January 24 and 25, 2011 to hear the protests of MTM and Logisticare. The CPO issued his decision on February 9, 2011 (the "Decision"), effectively denying the protests raised by MTM and Logisticare.

Both MTM and Logisticare requested further administrative review of the Decision issued by the CPO and a hearing before the South Carolina Procurement Review Panel regarding their protests and the Decision. The Panel conducted a hearing on April 27 and 28, 2011. On May 18, 2011, the Panel issued an Order upholding the CPO's Decision. On June 17, 2011, MTM timely filed its appeal on the Panel's May 18, 2011 Order. The appeal did not stay the effect of the Panel's Order and is currently pending in the Richland County Court of Common Pleas. Logisticare began servicing Region 1 under the NEMT contract and AMR began servicing Regions 2 and 3 under the NEMT contract in late August. In early January 2012, MTM learned that AMR had repudiated or otherwise terminated its NEMT Contract with DHHS concerning Regions 2 and 3. Counsel for MTM communicated with MMO and based on that conversation, MTM believed that the Contract would be serviced by Logisticare under an emergency procurement and that Regions 2 and 3 of the NEMT Program would be resolicited as soon as a new solicitation package could be assembled and issued.

On January 12, 2012, DHHS issued a Medicaid Bulletin to all providers regarding the NEMT Program. The Bulletin is attached hereto. MTM did not receive a copy of the Bulletin until it was forwarded to MTM's counsel on January 16, 2012. In the Bulletin, DHHS explained that AMR terminated its NEMT contract with DHHS concerning Regions 2 and 3 effective December 22, 2011.<sup>2</sup> According to the Bulletin, AMR would end its services on February 21, 2012, and Logisticare would begin servicing Regions 2 and 3 effective the same day. Counsel for MTM again communicated with MMO and confirmed that the award to Logisticare was an emergency basis and that Regions 2 and 3 of the NEMT Program would be re-solicited as soon as a new solicitation package could feasibly be assembled.

Subsequent to those initial phone conversations, on January, 23, 2012, MTM learned that the "emergency" contract awarded to Logisticare was for the same initial contract period as set forth in the original solicitation (i.e. three years). Upon information and belief, Logisticare has in fact already signed such a contract with DHHS. Because this emergency procurement was not publicly solicited, MTM is not aware specifically as to the times and conditions of the Contract.

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<sup>1</sup> Sonny Williams and Adrian Novit, two private citizens, also filed protests which were dismissed by the CPO for lack of standing.

<sup>2</sup> It appears MTM's original protest grounds for the award of Regions 2 and 3 to AMR may have in fact been the reason for AMR's termination.

MTM has filed this protest immediately upon learning of the facts and circumstances surrounding the emergency procurement. The grounds and basis for this protest are being asserted based on the limited information that has been provided from MMO and DHHS.

**GROUND FOR PROTEST:  
THE DECISION TO AWARD LOGISTICARE THE REMAINDER OF AMR'S  
CONTRACT FOR REGIONS 2 AND 3 ON AN EMERGENCY BASIS IS IN VIOLATION  
OF THE SOUTH CAROLINA CONSOLIDATED PROCUREMENT CODE;  
REGULATIONS PROMULGATED THEREUNDER AND SOUTH CAROLINA  
CASELAW**

MTM is not protesting that an emergency solicitation was issued, given the circumstances of and timing of AMR's repudiation or termination. MTM is protesting the award of the emergency procurement issued to Logisticare and the duration of the contract as being in violation of the South Carolina Consolidate Procurement Code (the "Code") and regulations promulgated thereunder.

S.C. Code Ann. § 11-35-1570, entitled "Emergency procurements," reads in its entirety:

Notwithstanding any other provision of this code, the chief procurement officer, the head of a purchasing agency, or a designee of either officer may make or authorize others to make emergency procurements only when there exists an immediate threat to public health, welfare, critical economy and efficiency, or safety under emergency conditions as defined in regulations promulgated by the board; and provided, that such emergency procurements shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

Regulation 19-445.2110 is the regulation promulgated under the authority in S.C. Code Ann. § 11-35-1570 applies "to every procurement made under emergency conditions that will not permit other source selection methods to be used." Regulation 19-445.2110(A). An "emergency condition" is defined by Regulation 19-445.2110(B) as

a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, fire loss, or such other reason as may be proclaimed by either the Chief Procurement Officer or the head of a purchasing agency or a designee of either office.

Further, emergency conditions "must create an immediate and serious need for supplies, services, information technology, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten the functioning of State government, the preservation or protection of property, or the health or safety of any person." *Id.* In the present case, DHHS was required to use a procedure to assure that it procured the required services to administer the NEMT program in Regions 2 and 3 in time to meet the emergency, using as much competition as practicable under the circumstances. 19-445.2110(E). MTM is

not necessarily protesting the propriety of DHHS declaring an emergency, if, in fact, DHHS has declared an emergency. Rather, MTM is challenging the method and scope of the procurement.

The decision to award Logisticare the remainder of AMR's contract for Regions 2 and 3 violates S.C. Ann. Code § 11-35-1570 and Regulation 19-445.2110(C), prior caselaw and panel decisions, as well as the spirit and purpose of the Code. See *In re: Protest of Homer L. Spires*, Case No. 1988-6; *Sloan v. S.C. Dep't. of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008). Pursuant to Regulation 19-445.2110(C), an "[e]mergency procurement shall be limited to those supplies, services, information technology, or construction items necessary to meet the emergency." (Emphasis added). Upon information and belief,<sup>3</sup> the basis for the emergency will involve the fact that AMR terminated its contract with DHHS and would leave two of the State's three regions without NEMT service within a short timeframe, and the compressed timeframe would make it impossible for DHHS to effectively re-solicit bids for those two regions. The conclusion is both expected and reasonable. However, an "emergency contract" that is tantamount to an assignment of the AMR contract to Logisticare for the full three year initial term of the AMR contract with the potential for two option years is clearly beyond the limit of what DHHS needs to meet the emergency. Upon information and belief, DHHS' method of engaging in the emergency procurement was done without any effort to seek competitive bids. The Procurement Code and regulations require the emergency procurement to be narrowly tailored to meet the emergency and with as much competition as is practicable. In this case, an emergency contract issued for a short period of time to allow the state to issue a solicitation for Regions 2 and 3 is the only circumstances upon which the award under the emergency protest process would be appropriate. To do anything else would reflect an emergency procurement that has gone beyond only addressing what is needed to meet the emergency.

To envision it taking DHHS three years to effectively re-solicit NEMT services for Regions two and three strains all credibility and reason. Signing a contract with Logisticare to service two-thirds of the State's NEMT program over the next three years absent competitive sealed bidding is a violation of the Code and laws of South Carolina.

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<sup>3</sup> MTM has sent a FOIA request to obtain the "written determination stating the basis for an emergency procurement and for the selection of the particular contractor" required to be made by the CPO or head of the purchasing agency or the designee of either office pursuant to S.C. Ann. Code § 11-35-1570 and Regulation 19-445.2110(F), but as of the writing of this protest letter, has not received the responsive documents.

### **RELIEF REQUESTED**

For the foregoing reasons, MTM respectfully requests that the CPO issue a decision finding that the emergency procurement and subsequent award to Logisticare was in violation of the Procurement Code and applicable regulations. MTM further requests that the award be cancelled and any further procurement relating to Regions 2 and 3 be performed in accordance with the Code. The State should have the benefit of a Contract awarded in accordance with the Code and based on a competitive bid for the services to be performed.

With my kindest regards, I am

Very truly yours,



E. Wade Mullins III

cc: Donald C. Tiemeyer, Esq.  
John Schmidt, Esq.  
Keith McCook, Esq.  
Molly Crum, Esq.  
Deirdra Singleton, Esq.

**South Carolina  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Post Office Box 8206  
Columbia, South Carolina 29202-8206  
[www.scdhhs.gov](http://www.scdhhs.gov)**

January 12, 2012

ALL

## MEDICAID BULLETIN

**TO: All Providers**

**SUBJECT: South Carolina Non-Emergency Medical Transportation (NEMT)**

American Medical Response, Incorporated, operating as Access2Care in South Carolina, has terminated their contract with South Carolina Department of Health and Human Services (SCDHHS) for the Non-Emergency Medical Transportation Program (NEMT). Effective December 22, 2011, Access2Care began its 60-day transition plan to exit the state by February 21, 2012.

Effective February 21, 2012, LogistiCare Solutions, LLC will begin covering the two (2) regions currently operated by Access2Care. At that time LogistiCare will be responsible for all three (3) NEMT regions in the state. During the 60-day transition period, transportation providers are expected to perform business as usual. SCDHHS is monitoring activities to ensure a smooth transition with no disruption to the current level of services being rendered.

A second Medicaid Bulletin will be released that includes contact information and the website address for LogistiCare. In the interim, if you have any questions about the NEMT Program please continue to address those concerns with your current broker or with the staff at SCDHHS.

If you have any additional questions or concerns regarding this bulletin, they should be directed to the Office of Hospitals and Durable Medical Equipment at (803) 898-2665. Thank you for your continued support in the South Carolina Healthy Connections program.

/s/  
Anthony E. Keck  
Director

February 7, 2012

M. Elizabeth Crum

**Via E-mail and Hand Delivery**

lcrum@mcnair.net  
T (803) 753-3240  
F (803) 933-1484

Voight Shealy  
Chief Procurement Officer  
Materials Management Office  
Suite 600  
1201 Gervais St.  
Columbia, SC 29201

Re: Protest by Medical Transportation Management, Inc. (MTM) of SC  
Department of Health and Human Services (SCDHHS) emergency  
procurement award of the non-emergency medical transportation  
(NEMT) Regions 2 and 3 of Solicitation 5400002201

Dear Mr. Shealy:

This firm represents American Medical Response, Inc. (AMR) in connection with the above-referenced protest. AMR, the current contractor, has an interest in participating in MTM's protest and assuring that AMR's rights under the Procurement Code are protected and is therefore moving to intervene or, in the alternative, to protest the term of the emergency procurement to Logisticare Solutions, Inc. (Logisticare) award. Our motion to intervene should be granted because:

1) AMR's absence as a party to the protest will, as a practical matter, impair or impede the Chief Procurement Officer's (CPO) ability to grant, as he so chooses, complete relief as requested by MTM and AMR;

2) disposition of this protest without AMR as a party will, as a practical matter, impair or impede AMR's ability to protect its interests under the existing contract; and

3) AMR's participation during the protest will allow the SCDHHS to save money during the procurement protest and, if any, another procurement of the NEMT services.

AMR's interests will not be adequately represented by existing parties and the proposed intervention will not unduly prolong the proceedings or otherwise prejudice the rights of existing parties. If allowed to intervene, or in the

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alternative, to protest the term of the emergency procurement, we would submit the following for the consideration of the CPO.

### **FACTUAL ISSUES AND PROCEDURAL BACKGROUND**

Solicitation No. 5400002201 (RFP) sought to procure brokers to contract with the SCDHHS to administer the NEMT services program for SCDHHS eligible Medicaid recipients (members). The RFP divided the State is divided into three (3) regions. The NEMT services set forth in the RFP are to be administered by a qualified broker.

South Carolina Materials Management Office (MMO) determined that LogistiCare was the highest ranked Offeror for Region 1 and that AMR was the highest ranked Offeror for Regions 2 and 3. On December 3, 2010, MMO issued Notices of Intent to Award the NEMT contract for Region 1 to LogistiCare and Regions 2 and 3 to AMR. Each of the contracts has an initial contract period of three years with two option years for a maximum contract period of five years. The contract notices to proceed date was May 25, 2011 and the initial term will expire May 25, 2014. LogistiCare and AMR each began the implementation phases of their respective Regions on or about May 25, 2011, and "went live" with brokerage services on or about August 17, 2011.

MTM protested the award of Regions 1, 2, and 3 and LogistiCare protested the award of Regions 2 and 3. After a hearing, the CPO issued his decision denying the protests raised by MTM and LogistiCare. MTM and LogistiCare appealed the CPO decision to the South Carolina Procurement Review Panel (Panel). On May 18, 2011, after hearing the protests, the Panel issued its Order sustaining the CPO's decision. On June 17, 2011, MTM timely filed its appeal on the Panel's May 18, 2011 Order. The appeal is currently pending in the Richland County Court of Common Pleas, Civil Action No. 11-CP-40-03946.

On November 22, 2011, AMR submitted a change order for Solicitation 5400002201 Regions 2 and 3 to the MMO, seeking an increase in the fixed price for each region—\$11,961,009 for Region 2 and \$ 12,997,734 for Region 3. On November 30, 2011, AMR representatives met with SCDHHS representatives to explain the change order request and the nature of the bid mistake (approximately an \$18,000,000 human error) and the RFP supplied data for which it was seeking relief. See Exhibit 1. On December 1, 2011, AMR wrote a letter to Mr. Keck, the SCDHHS Director, apologizing for the bid mistake and requesting the opportunity to meet personally with him "prior to any final decision of [AMR's] Change order request and discuss the best solution for going forward." See Exhibit 2. No meeting occurred.

On December 1, 2011, AMR also wrote a letter to SCDHHS following up on the November 30 meeting. See Exhibit 3. In the letter, among other things, AMR explained that whether AMR's change order request was granted or a new broker was put in place,

SCDHHS was going to have to pay the true cost of the transportation services and it would be cheaper for the State to grant the change order than it would be to go to the next highest ranked offeror whose price would still be higher than AMR's even if the change order were granted. AMR further explained that because of the federal matching dollars that South Carolina receives through the Medicaid program, the net effect to the State was that it would only be monetarily responsible for approximately 30% of change order amount. The letter also followed up on a suggestion that AMR made to SCDHHS during the November 30, 2011 meeting where AMR suggested that the State could save approximately \$3 million annually by following AMR's suggestion that SCDHHS allow brokers to require that members receive transportation services only to the closest medically appropriate provider that can provide health services to members, unless medical necessity determines otherwise, as provided for in the May 31, 2011 "South Carolina Title XIX State Plan Amendment, Transmittal # 11-002".

On December 12, 2011, MMO issued its determination to deny AMR's change order request. On December 16, 2011, AMR sent a letter to SCDHHS stating:

Given the fact that the State has denied AMR's change order request, and given the extreme economic consequences that AMR would suffer as a result of continuing the provided services without the benefit of the change order, it is necessary for AMR to work with the State on exercising this option [to conduct an orderly and timely transition of the brokerage services for Regions II and III to another contractor of SCDHHS' choosing.]

A copy of this letter with attachments is attached hereto as Exhibit 4.

Attached to the change order denial is a chart entitled "Original Monthly Charges (does not include implementation Costs) Award vs. LC proposal." The chart purports to show the impact the AMR change order request, if approved, would have on the NEMT monthly contract vis a vis LogistiCare's monthly contract charges. The upshot of this chart is that SCDHHS would still have saved money for each month in years 1, 2, and 3 by approving AMR's change order request. The chart contains a significant mathematical error. The chart shows that the resulting monthly increase for AMR if the State granted the change order for Region 3 to be \$318,622.89 for year 1, \$417,549.75 for year 2, and \$1,083,144.5 for year 3. In reality, the increase for year 3 would be \$426,127.58, a \$657,016.92 error. It appears that to reach the monthly increase resulting from the change order, MMO divided the change order annual total dollars by 12. For example, in year 2 for Region 3, the total change order request was \$5,010,597. Dividing that by 12, the monthly increase is \$417,549.75, the exact number that MMO included in its chart for the Region 3, year 2 monthly increase. It appears that when MMO calculated the monthly Region 3, year 3 dollar increase, it divided that total Region III change order request amount of \$12,997,734 by 12 and derived annual

increase figure for year 3 of \$1,083,144.50. The correct calculation is to divide the Region 3, year 3 change order request of \$5,119,531 by 12, resulting in a monthly increase of \$426,627.58 instead of \$1,083,144.50. This human error resulted in a chart that showed AMR, with the change order, having a higher cost to the tune of \$375,678.75 than LogistiCare when, in reality, AMR's year's Region 3, year 3 monthly cost was \$281,338.17 **lower** than LogistiCare's monthly cost. Assuming the accuracy of the monthly cost of LogistiCare for nine (9) months of year 1, and years 2 and 3 for Regions 2 and 3,<sup>1</sup> using MMO's numbers, even granting AMR's change order request, SCDHHS could still save \$11,675,185.94 by continuing to use AMR.

On January 10, 2012, AMR received a letter from SCDHHS stating:

While you state that denial of AMR's Change order request would result in "extreme economic consequences" to AMR, AMR's (sic) decision to discontinue providing brokerage services under its contract with SCDHHS, (sic) has left SCDHHS no alternative but to secure another broker that can provide the services so that beneficiaries will not have a break in transportation services. SCDHHS has only consented to a sixty (60) day transition period in this emergency situation caused by AMR's decision to cease providing brokerage services. In no way should this consent be construed such that SCDHHS has forgiven or waived AMR's responsibility to provide brokerage services under the contract.

A copy of this letter is attached hereto as Exhibit 5. On January 12, 2012, DHHS issued a Medicaid Bulletin to all providers regarding the NEMT Program and the transition in Regions 2 and 3 from AMR to LogistiCare. The Bulletin is attached hereto as Exhibit 6. The Bulletins stated that effective December 22, 2011, AMR began its transition and effective February 21, 2012, LogistiCare will begin covering all three Regions of the State.

Not having received a copy of either the contract with the new Region 2 and 3 provider or the procurement by which the contract was solicited,<sup>2</sup> on January 12, 2012, orally during a meeting with SCDHHS and in writing, pursuant to the South Carolina Freedom of Information Act (FOIA), we requested copies of the solicitation for Region 2 and 3 by which the contract was awarded to Logisticare and the brokerage contract for the Regions. On January 19 and 24, 2012, we renewed AMR's FOIA request. On the morning

<sup>1</sup> AMR only has access to LogistiCare's total fixed price submitted as part of its response to the RFP. AMR is relying on the monthly costs for the three years of the contract for Regions 2 and 3 as shown in the MMO chart.

<sup>2</sup> On January 30, 2011, AMR received a copy of an announcement from the Transportation Association of South Carolina announcing that LogistiCare was going to take over the brokerage contract for Regions 2 and 3. This announcement was forwarded to SCDHHS stating that it "appeared" that SCDHHS had entered into a contract with LogistiCare and suggested dates that SCDHHS and AMR could meet to discuss the costs associated with the transition.

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of January 26, 2012, not having received the requested materials, we made the FOIA request to MMO. On January 26, 2012, in the afternoon USPS mail, we received from SCDHHS the emergency contract between SCDHHS and LogistiCare for Regions 2 and 3. Later that afternoon via e-mail, we received the emergency contract and the emergency procurement justification documentation from MMO. The first time that AMR was made aware that the emergency procurement was for the remaining term of the contract—through May 24, 2014, and possibly for the two option years—was January 26, 2012.

AMR received a copy of the MTM protest on January 31, 2012. As we understand the law, the MTM protest stays the award of the emergency contract unless and until the CPO, in consultation with the procuring agency, determines to lift the stay. Additionally, assuming for purposes of this argument, the CPO determines that SCDHHS cannot, in effect, assign the NEMT Region 2 and 3 contracts as MTM argues, there will still have to be a broker providing NEMT services.

In its January 10, 2012 letter, SCDHHS stated that it had only “consented to a sixty (60) day transition period” but that this consent did not forgive or waive AMR’s responsibility to provide brokerage services under the contract. AMR agrees with MTM that the emergency procurement cannot extend for the life of the NEMT contract but should be for the shortest contract period feasible to obtain the service. See: In Re: Protest of American Southern Insurance Co. Appeal by American Southern Insurance Co., ACPD 2003-3(II), 2003 WL 23864971. As the Panel said in In Re: Protest of Homer I. Spires, masonry Contractor, ACPD 1988-6, 1988 WL 2011383: “The existence of an emergency, therefore, does not justify the wholesale suspension of the basic policies and safeguards build into the Procurement Code. Even in an emergency, an agency must act fairly and ethically towards all parties concerned.”

AMR is willing to discuss continuing to provide brokerage services under the terms of the current contract, under appropriate conditions, in this emergency situation while MMO and SCDHHS conduct a new procurement. Under this scenario, the State could save significant money, as demonstrated by the MMO calculations, and conduct an orderly, proper procurement. As we know, one of the purposes of the Procurement Code is to “to maximize to the fullest extent practicable the purchasing values of funds while ensuring that procurements are the most advantageous to the State”. S.C. Code Ann. 11-35-20(a) (Supp. 2011).

AMR’s Motion to Intervene should be granted and it should be allowed to participate in the protest as set forth herein. If you have any questions, please do not hesitate to contact me at 803-753-3240.

---

Very truly yours,

A handwritten signature in black ink, appearing to read "M. Elizabeth Crum", followed by a long horizontal flourish.

M. Elizabeth Crum

Attachments

cc: Deirdra Toland Singleton, Esquire  
Vicki Johnson, Esquire  
Ashley Bracken, Esquire  
E. Wade Mullins III, Esquire  
Keith Cassidy McCook, Esquire  
Molly R. Crum, Esquire  
John Stevens



November 22, 2011

John R. Stevens, State Contracting Officer  
State of Carolina - Materials Management Office  
1201 Main Street, Suite 600  
Columbia, SC 29201

**CHANGE ORDER REQUEST**  
**Solicitation 5400002201**  
**Regions II and III**

Dear Mr. Stevens:

American Medical Response, Inc. (AMR) submits this request for a change order in Solicitation 5400002201, the Non-Emergency Transportation Services (NEMTS) (RFP), pursuant to the requirements of the contract with the South Carolina Department of Health and Human Services (SCDHHS) and the SC Procurement Code and Regulations. Specifically, we request an increase in the amount of contract fees of \$11,961,009 for Region II and of \$12,997,734 for Region III for the first 33 months of the contract. Please see Table 1 (Region II) and Table 2 (Region III), attached hereto for detail. The basis of this request is two-fold: 1) a significant increase in the trip volume versus the "Past Service Volume" data in the RFP; and 2) an after discovered bid mistake.

Justification:

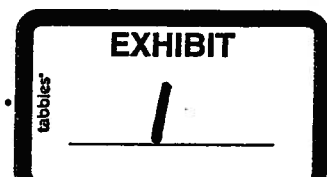
AMR was the successful offeror in responding to the NEMTS RFP. The RFP provided, in pertinent part:

RFP Section 1.4 Past Service Volume

For state fiscal year 2008, the state's Brokers reported that approximately 1,707,311 one-way trips were made throughout South Carolina. These 1,707,311 trips accounted for approximately 24,143,756 point-to-point miles. RFP Appendices B – F include additional service volume data for FY 2008, FY 2009 and partial FY 2010.

For state Fiscal Year 2009, SCDHHS arranged 73 trips outside the South Carolina Medicaid Services Area (SCMSA). See Appendix J for the description of the SCMSA. Appendix O includes additional service volume data for trips arranged outside the SCMSA.

The reports listed in Appendix I include the breakout of eligible members by age group, however the reports include all members regardless of their eligibility for transportation services. The reports also include members that became eligible retroactively for the month and members that may be counted twice if they moved from one county to another county within a month. In addition, the annual eligible members for each county include all members that were eligible during any part of the year.



The above referenced statistical data, except for trips outside the SCMSA and the eligibility information, was provided to SCDHHS by the current brokers. SCDHHS does not guarantee the accuracy of this data. SCDHHS also does not guarantee the service volume will be the same throughout this contract. Discovery of any inaccuracy in this data will not constitute a basis for contract rejection by any Offeror. Further discovery of any inaccuracy in this data will not constitute a basis for renegotiation of any payment rate after contract award. It is the Offeror's responsibility to take into consideration normal volume increases over the contract period.

AMR's proposal certainly took into consideration normal volume increases over the contract period, by assuming a 4.4% annual trip increase. In fact, the trip volume increase is averaging 8.3% per year – almost double what AMR reasonably anticipated (see Table 3 below). Certainly, an increase of over one hundred thousand trips per year over the RFP data is not a "normal volume increase."

#### RFP Service Volume Issues

AMR actual experience thus far indicates that utilization is running at a rate equal to approximately 61,000 annual trips in Region II and 45,000 trips in Region III more than documented in the RFP service volume projections. (See Table 3 below). This equates to \$5,203,816 in Region II and \$1,859,197 in Region III of the additional contract fees requested. A significant portion of this increase is due to increased ambulance utilization. The RFP data demonstrated a low utilization for ambulance (17 trips annually) for State Fiscal Year 2010 for Regions II and Regions III combined. Since implementation, AMR has aggressively case managed ambulance utilization and is still experiencing trip volumes expected to equal 5,544 ambulance trips per year. This current experience, when adjusted for seasonality, is in line with the data from SFY2008 and adjusting for membership growth. Conversations with multiple ambulance providers have revealed that there are apparently hundreds of unpaid ambulance claims that were never paid from the previous program. Because these trips were never paid, the trip was never completed, so the information was not included in the RFP data resulting in an understated level of ambulance utilization.

#### Bid Mistake Regarding Mileage Calculation

Appendix B and C of the RFP contain monthly trip counts for multiple fiscal years by trip type and by county. Appendix D of the RFP contains total mileage for multiple fiscal years by trip type and by county. AMR used the data from July to December of 2009 (partial SFY 2010) to accumulate the total trips and total mileage for that period of time. For example, in Region I, for partial SY2010, the total ambulatory trips for Region I per RFP Appendix B were 216,154, and the total mileage for ambulatory trips for Region I from Appendix D was 2,584,371 miles. Dividing out these two numbers gives us an average mileage per ambulatory trip of 11.96 miles. Following the same process yielded the following results for Regions II and III (Region I included in the table for ease of comparison):

July, 2009 to December 2009	Ambulatory Trips ( Appendix B)	Ambulatory Mileage (Appendix D)	Average miles per Trip
<b>Region I</b>	216,154	2,584,371	11.96
<b>Region II</b>	270,187	4,356,859	16.13
<b>Region III</b>	269,330	5,232,127	19.43

Once these mileages were calculated, AMR populated our standard bid template with the data from Region I, using the average mileage of 11.96 miles per ambulatory trip (ambulatory trips are used by way of example – the same process was used for the other trip types). The bid templates were created for Regions II and III by copying the model built for Region I and modifying the data that was different for those regions. Through a clerical error on the part of AMR, the average mileage per trip for Region I remained static in the subsequent templates, resulting in a material understatement of mileage for Regions II and III. The following table summarizes the impact on the number of miles using RFP data (not actual trip experience).

July, 2009 to December 2009	Ambulatory Trips ( Appendix B)	Average miles per trip that should have been used	Average miles per trip that were used in our bid	Annual miles understated in the A2C bid
<b>Region I</b>	216,154	11.96	11.96	0
<b>Region II</b>	270,187	16.13	11.96	2,253,359
<b>Region III</b>	269,330	19.43	11.96	4,023,790
<b>Total</b>				6,277,149

The understated miles were derived by multiplying the calculated mileage differential by two times the trip volume (to reflect twelve months of trips). Note that the above numbers reflect miles for ambulatory trips only.

Over the thirty three months of the contract, the mileage error equates to \$6,757,193 in Region II (see Table 1) and \$11,138,537 for Region III (Table 2).

#### Summary

The above factors result in the total additional contract fees requested for the first thirty three months of the contract as follows; \$11,961,009 for Region II and \$12,997,734 for Region III for the first thirty three months. See Tables 1 and 2 respectively.

The breakdown for each region by contract year is as follows:

<b>Table 4 – Breakdown by Region by Contract Year</b>				
	<b>August 22, 2011 May 25, 2012</b>	<b>May 26, 2012 May 25, 2013</b>	<b>May 26, 2013 May 25, 2014</b>	<b>Total</b>
Region II	\$2,636,578	\$4,611,188	\$4,713,243	\$11,961,009
Region III	\$2,867,606	\$5,010,597	\$5,119,531	\$12,997,734
<b>Combined</b>	<b>\$5,504,184</b>	<b>\$9,621,785</b>	<b>\$9,832,774</b>	<b>\$24,958,743</b>

Of course, we are aware of the language contained in § 1.4 in the RFP quoted above, and as stated above, AMR took trip volume increase into consideration in its bid.

Finally, we point out that when the NEMT contract was implemented with Logisticare five (5) years ago, Logisticare had to come to the State and ask for a change order to increase the price and that change order was granted. We are not setting a precedent in asking for this price increase.




AMR believes that it had and has a reasonable expectation and right to rely on the data provided by the Department, while not having the exact accuracy being guaranteed, to have past volume services at least being reasonably accurate. While the SCDHHS did not guarantee the data, the past service volume was included so that prospective offerors who were not incumbent could have a reasonable and fair opportunity to compete for the contract award. As one of the purposes of the Procurement Code states, the Code exists "to ensure the fair and equitable treatment of all persons who deal with the procurement system which will promote increased public confidence in the procedures followed in public procurement." S.C. Code Ann. § 11-35-20(f)(Supp. 2010).

In conclusion, AMR would like to remain a partner with the State and complete this contract successfully. The company cannot continue to sustain these losses. Unless we get an immediate price increase, we will have no choice but to exit the contract. If we are forced to exit the contract, we will work with the State for a timely and orderly transition.

**Pursuant to § 11-35-410(B), we specifically request that any and all pricing information that is or will be submitted as part of this request be treated as privileged and confidential information.**

Yours truly,

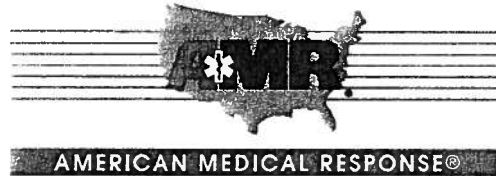
A handwritten signature in black ink, appearing to read "Steven G. Murphy". The signature is fluid and cursive, with the first name "Steven" and last name "Murphy" clearly distinguishable.

Steven G. Murphy  
Senior Vice President, Government and National Services

Table 1 - Region II					
	9 Months Year 1	Annual Year 2	Annual Year 3	Total	Comments
AMR Actual Experience (projected)	521,759	703,939	714,023	N/A	
AMR Bid Volume	502,337	664,752	670,241	N/A	
Trip Volume Difference from bid	19,422	39,187	43,782	102,391	Increased trips versus bid
Volume Financial Impact	\$796,546	\$2,163,370	\$2,243,900	\$5,203,816	Financial impact of additional trips
Mileage Financial Impact	\$1,840,032	\$2,447,818	\$2,469,343	\$6,757,193	Actual 14.5 miles per trip versus bid mileage of 11.97miles per trip
Change Order Request	\$2,030,296	\$3,426,563	\$3,427,502	\$11,961,009	

Table 2 - Region III					
	9 Months Year 1	Annual Year 2	Annual Year 3	Total	Comments
AMR Actual Experience (projected)	512,968	692,082	701,996	N/A	
AMR Bid Volume	493,873	653,556	658,951	N/A	
Trip Volume Difference from bid	19,095	38,526	43,045	100,666	Increased trips versus bid
Volume Financial Impact	(\$172,637)*	\$978,714	\$1,053,120	\$1,859,197	Financial impact of additional trips
Mileage Financial Impact	\$3,040,243	\$4,031,883	\$4,066,411	\$11,138,537	Actual 16.5 miles per trip versus bid mileage of 11.97 miles per trip
Change Order Request	\$2,867,606	\$5,010,597	\$5,119,531	\$12,997,734	
<ul style="list-style-type: none"> <li>Negative number due to provider rate efficiencies achieved earlier than projected in Region III</li> </ul>					

Table 3 - Trip Volume Comparison (Annual)					
	RFP Data	AMR Bid*	Actual Experience*	Annual Difference Actual vs. RFP	Monthly Difference Actual vs. RFP
Region II	634,272	669,783	695,679	61,407	5,117
Region III	638,624	658,498	683,957	45,333	3,778
<b>Total</b>	<b>1,272,896</b>	<b>1,328,281</b>	<b>1,379,636</b>	<b>106,740</b>	<b>8,895</b>
Percent increase from RFP	N/A	4.4%	8.4%		
* Year 1 annualized					



December 1, 2011

Anthony E. Keck, Director  
South Carolina Department of Health & Human Services  
PO Box 8206  
1801 Main St.  
Columbia, SC 29201

Re: Meeting with SCDHHS on November 30, 2011

Dear Mr. Keck:

Thank you for the opportunity to meet with Ms. Giese, Ms. Singleton and your other staff on November 30, 2011, regarding AMRs Change Order request. While we were happy to meet with your staff, we were sorry we were not able to meet with you. Mr. Sanger and I still would welcome the opportunity to meet personally with you prior to any final decision of our Change Order request and discuss the best solution for going forward.

As I personally assured your staff yesterday, AMR sincerely apologizes for its bid mistake. This is not the way we do business and it is not something that has happened to us before in our hundreds of bids with various public entities and private companies. Our mistake has unfortunately put both the State and AMR in difficult positions. Additionally, we believe there was a significant increase in the trip volume versus the "Past Service Volume" data in the RFP, which also required an additional increase in the amount of our Change Order request. Please refer to the enclosed letter to Ms. Giese for greater detail on both of these issues. We look forward to the opportunity to meet with you.

Sincerely,

Steven G. Murphy  
Senior Vice President, Government and National Services

CC: Melanie "Bz" Giese, RN  
Deirdra T. Singleton

Enclosure





December 1, 2011

Ms. Melanie" BZ" Giese, RN  
Deputy Director, Medical and Managed Care Services  
South Carolina Department of Health & Human Services  
PO Box 8206  
1801 Main Street, J-1116  
Columbia, SC 29202

Re: Follow up to our meeting of November 30, 2011

Dear Ms. Giese:

Please accept my thanks for you and other Department staff taking the time to meet with me and AMR representatives November 30, 2011 regarding our request for change order and other issues. Again, I want to assure you, as I did on Wednesday, AMR sincerely apologizes for its bid mistake pertaining to the average miles used in our bid calculation. This is not the way we do business and it is not something that has happened to us before in our hundreds of bids with various public entities and private companies. Our mistake has unfortunately put both the State and AMR in difficult positions. Since there is nothing that we can do at this point to undo the mistake made, we are focusing on solutions that best address the issues on a going forward basis.

Our Change Order Request is for approximately \$25 million over the next three years, of which approximately \$7 million is from understated volume based on the data supplied the RFP and \$18 million based on our human error. In that the federal participation for South Carolina Medicaid is 70 % and the State participation is 30%, the total dollar impact to SCDHHS is approximately \$8.25 million over the next three (3) years or approximately \$2.72 million per year. In our meeting yesterday morning, we also made a suggestion to you that would further reduce the dollar impact to the State, not only in Regions II and III, but also in Region I.

As we noted Wednesday morning, historically, SCDHHS has allowed Medicaid members to go to any health care provider of their choice for medically necessary services, without regard to whether the provider was the closest appropriate provider to the member's location. CMS has waived its "any willing provider" provision so that members can be taken to the closest provider that can meet the beneficiary's medical need. We believe that based upon the May 31, 2011 "South Carolina Title XIX State Plan Amendment, Transmittal # 11-002" from Ms. Glaze to Mr. Keck, the State Plan authorizes brokers to take members to the closest medical provider that can provide services to the members. Attachment 3.1-A, page 9d, provides, in part: "The Broker(s) shall provide administrative oversight . . . gate-keeping, certification and verification of need and cost-effectiveness, . . . ." Certainly, the most cost-effective transportation is the shortest distance. Based only on Regions II and III and our experience to date in transporting dialysis patients, we believe that the State can save approximately \$1.5 million annually and extrapolating that number to all members, approximately \$3 million annually. Obviously, transporting to the closest medically appropriate provider in Region I will save additional

monies. Under any circumstances, we urge SCDHHS to allow brokers to take members to the closest medically appropriate provider, thereby saving the State a significant amount of money.

As I stated during our meeting, it is AMR's hope to continue as the SCDHHS NEMT Broker for Regions II and III with the Change Order adjustment. For the following reasons, we believe that granting AMR's Change Order Request, in combination with allowing a closest appropriate medical provider requirement, offers the best solution for the State, its Medicaid members, the transportation providers and AMR. First, as reiterated above, the actual fiscal impact to South Carolina is not nearly as substantial as it appears at face value. Please see the calculation directly below:

Total Change Request-	\$24,958,743
Less Estimated Federal Match-	- 17,471,120
Less Impact for Closest Medical Provider Policy-	- <u>3,000,000*</u>
Net Estimated 3 Year Fiscal Impact to State-	<u>\$ 4,487,623</u>
Net Estimated Annual State Fiscal Impact	<u>\$ 1,485,874</u>

\* Closest Medical Provider Impact is estimated at approximately \$3,000,000 per year for Regions II and III or approximately \$9,000,000 over the contract term less approximately \$6,000,000 in federal match dollars. Please note also that this does not include possible savings from Region I.

Second, whether it is AMR or another company providing brokerage services in Regions II and III, the true costs associated with the transportation will have to be paid as the dollars represented in AMR's request constitute actual program costs. Further, this scenario will:

1. Prevent disruption and insure stability of service in the transportation of members;
2. ensure stability and certainty for the current transportation providers;
3. prevent the State from having either to undertake an emergency procurement or a new NEMT procurement. As we stated Wednesday morning, a significant number of the transportation providers seem to be quite pleased with the services being provided by AMR;
4. have the matter settled prior to the Legislature coming back into session;
5. given the small universe of companies providing brokerage services, ensure that there is a broker willing to provide the services;
6. prevent the possibility of contract dispute litigation that could be long, costly and disruptive to all; and
7. Allow AMR to continue to partner with DHHS to improve the brokerage program. AMR believes, based on the letters obtained from transportation providers, that we have already made a difference in the integrity of the transportation program.

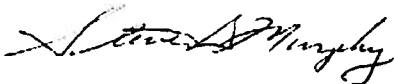
In the event that the State determines not to approve our Change Order request, we are prepared to work with SCDHHS to negotiate and accomplish a speedy and orderly transition to the entity of the State's choosing during a 60-day period. Considerations for this solution are as follows:

1. There are a limited number of transportation brokers in the country that provide the type of services needed in Regions II and III. Of course, Logisticare is already providing services in Region I and if they took over Regions II and III, there would only be one broker for the State.
2. SCDHHS could take over the management of Regions II and III. AMR has a well staffed call center in place that the State could utilize.
3. Currently MCO's provide transportations services to members in limited circumstances. The MCO's could take over the NEMT brokerage services. However, there are a number of MCO's in the State and each would have to duplicate the administrative staff, infrastructure and services as they each secured their own (and possibly different) transportation manager (broker).. This duplication would be an extra cost to the NEMT program. Additionally, MCOs are not experts in transportation and there is likelihood that the integrity and quality of transportation provided to members would lack consistency and continuity.
4. SCDHHS could eliminate the brokerage NEMT system and go back to the previous system where the RTAs/COAs provided services on a county by county or sometimes multiple county areas. However, this would require an amendment to the State Plan and CMS approval. Further, if SCDHHS were to abandon the transportation broker system, it would lose the increased federal match.

Finally, in the event, hopefully unlikely, the State did not approve the Change Order or we were not able to negotiate an orderly transition to another broker, AMR would have no choice but to give the State notice, we propose 60 days, unless the State can demonstrate that there is a different time frame to accomplish the transfer in the contract. If the State were to agree to temporary relief in the form of an interim change order, we would agree to a longer transition period. We sincerely do not want to be involved in a contract controversy with South Carolina. However, as we explained Wednesday morning, AMR cannot continue to lose approximately \$1 million per month and we must be able to recognize any additional liabilities associated with contract termination prior to the end of calendar year, and AMR fiscal, year 2011.

While we fully understand that the Materials Management Office (MMO) officially determines whether to approve a change order, we believe that MMO will certainly be guided, if not totally influenced, by SCDHHS' guidance. Again we appreciate your careful consideration of this matter and your cooperation towards a speedy resolution.

Sincerely,



Steven G. Murphy  
Senior Vice President, Government and National Services

Cc: Deirdra Singleton, Esquire  
John Stevens  
M. Elizabeth Crum, Esquire

NIKKI HALEY, CHAIRMAN  
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December 12, 2012

American Medical Response  
Steven G. Murphy, Senior Vice President  
Government and National Services  
6200 S. Syracuse Way, Suite 200  
Greenwood Village, CO 80111

Re: November 22, 2011, Change Order Request Letter

Dear Mr. Murphy,

The State received and conducted a review of your request for a change order for Contract Number 4400003144.

In your letter of request, you cite 1) a significant increase in the trip volume versus the "Past Service Volume" data in the RFP, and 2) an after discovered bid mistake.

Solicitation Number 5400002201 was issued following extensive development by the Department of Health & Human Services and Materials Management Office. This development was intended to take lessons learned from our last solicitation and contract processes and to incorporate select recommendations from the 2009 Legislative Audit Council (LAC) report entitled, "A Review of the Non-Emergency Medical Transportation Program of the Department of Health & Human Services."

Although your letter uses RFP Section 1.4 to point out an alleged under-reporting of past service volume and its effect on your ability to accurately price the RFP, the language in the price proposal was very specific, and read as follows:

Original RFP, Pages 92-93

(b) Price Proposal

Offerors should make certain that all costs associated with providing the services required in this RFP are included in the Offeror's firm fixed price for the Contract. No other cost will be allowed if not included in this Price Proposal and reflected in the firm fixed price. **The Offeror must further certify that the total price accurately reflects the Offeror's total proposal cost plus profit, including any applicable discounts, and that the company will deliver the services and related items for this amount.** The Offerors' Price Proposals will be evaluated based on the total for the initial three-year contract term.

In addition, the terms and conditions of the RFP and resultant contract read as follows:  
Original RFP, Page 103

**FIXED PRICING REQUIRED (JAN 2006)**

Any pricing provided by contractor shall include all costs for performing the work associated with that price. Except as otherwise provided in this solicitation, contractor's price shall be fixed for the duration of this contract, including option terms. This clause does not prohibit contractor from offering lower pricing after award. [07-7A040-1]

In Amendment 1, an incumbent contractor asked questions about past service volume. The questions, and the DHHS responses, read as follows:

**Page 19, Question 10**

10. Page 20, 1.4: Section 1.4, Past Service Volume, references the number of Medicaid eligibles in Appendix I and states that those eligible for NET services are approximately 710,000. In the last three contract periods, we have seen our monthly Medicaid membership increase by approximately 80,000 members in our regions alone (roughly 20%) and according to an August 30th, Deloitte Center for Health Solutions Bulletin, it is estimated that within the next three years the Medicaid enrollment will increase from 58.8 million to 76 Million due to HealthCare reform, approximately 31%. Has the Agency developed any forward-looking projections on the potential growth of South Carolina Medicaid enrollment that may assist all bidders and can you share with us what those growth assumptions are?

Answer: The agency has developed some forward looking projections but not specifically for the purpose of non-emergency transportation. These projections may be found on the agency's website at [www.scdhhs.gov](http://www.scdhhs.gov). Discovery of any inaccuracy in this data will not constitute a basis for contract rejection by any Offeror. Further discovery of any inaccuracy in this data will not constitute a basis for renegotiation of any payment rate after contract award. It remains the Offeror's responsibility to take into consideration normal volume increases over the contract period.

**Pages 19-20, Question 11**

11. Does the agency plan on handling the effects of HealthCare reform and its effect on Medicaid membership on this fixed budget contract through annual reviews with Milliman or is a bidder to incorporate a similar 20 to 30% increase to members, unduplicated and trip volume over the next five years in pricing this contract?

Answer: SCDHHS does not anticipate an annual outside actuarial review. The Broker should provide its best price for transportation services.

**Page 20, Question 12**

12. Page 20, 1.4: Section 1.4 Past Service Volume - we have experienced a 26% growth in unduplicated riders, which trends along with the increase in members stated above, as well as the trip volume. In addition, part of this unduplicated increase was also due to the inclusion of certain transportation programs previously managed and paid directly to certain medical facilities. Does the Agency foresee any additional programs or volume currently paid outside the NET program that it may want to include in the NET program over the next three years?



Answer: SCDHHS is expecting to add the Healthy Connections Kids (HCK) population of approximately 16,000 children in the fourth quarter of calendar year 2010. However, this population currently provides its own transportation and the agency does not anticipate significant utilization of the transportation program. At this point, no additional programs are anticipated.

Page 25, Question 30

30. Page 147, Appendix D: Along with over a 20% increase in program trip volume, the average miles per trip have increased 13.3% through 2009. Healthcare reform is about to take affect and some analysts predict that there will be some facilities/offices that will no longer accept Medicaid which will most likely cause miles per trip to continue to increase. At an average cost per mile of approximately \$1.80, this continued increase would add considerable cost to the program. Does the state expect a possible deterioration of available medical providers that accept Medicaid as in other states? Has the state done an analysis of the potential deterioration? If so, will you share this analysis with the bidders?

Answer: The State chooses not to speculate as to the impact of Health Care Reform.

The questions listed above published in Amendment 1 to the solicitation point out to the prospective offerors that the incumbent contractors saw changes in program participation during their performance period.

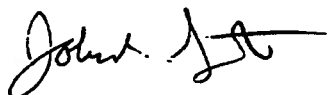
In reference to AMR's alleged bid mistake, there were multiple opportunities through an extended award period created by the protest process for AMR to re-evaluate its pricing, and, if in error, withdraw its offer prior to any final award. In particular, competing offeror MTM protested "that the pricing of bids of AMR for Regions 2 and 3 and Logisticare in Region 1 are actuarially unsound, and consist of predatory, commercially unreasonable pricing in an attempt to "buy" a State NEMT contract." Since AMR chose to defend its pricing in the hearing before the Chief Procurement Officer, it is unreasonable for the State to now accept an argument that its pricing was in error.

In addition, the state must consider the impact to the competitive marketplace when evaluating your request for an increase. Attached, please find an analysis of the original RFP scoring compared to the revisions applied to pricing requested in the change order. As you'll note, applying your change order amounts to the price scores would change the outcome of the original solicitation by making Logisticare the highest scored offeror for Regions 2 and 3.

Finally, when alleging that a request for increase would not set a precedent, one must compare the different pricing methodologies between the last contract solicitation and the current one. In the 2006 solicitation, the state selected a capitated rate model for use by the offerors. Those rates were subject to review by an actuary to determine "actuarial soundness." In the current contract, prices are to be fixed for the first term of the contract. The rate structure allows for no adjustments to the pricing during any given term. While the per member per month (PMPM) amounts may have been adjusted under the previous contract, the contractors were required to stay within the maximum bid amounts. Even so, those adjustments were criticized by the LAC in its audit.

In conclusion, it is the State's expectation that AMR will fully perform its requirements under the contract at the prices offered through the end of the initial term.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Stevens", with a stylized flourish at the end.

John R. Stevens, CPPB, CPM  
State Procurement Officer

Attachment

Cc: M. Elizabeth Crum, McNair Law Firm, P.A.  
D. Singleton, Health & Human Services  
file

# Original RFP Scoring

	Bid Amount	Price Score (out of 150)	Technical Score (out of 225)	Corp Exp. Score (out of 125)	Total (out of 500)
<b>Region 1</b>					
AMR	\$38,458,413	150	181	106	437
LC	\$39,892,608	144.6	194	113	451.6
MTM	\$43,553,548	132.45	156	106	394.45
SET	\$56,207,083	102.65	159	97	358.65

<b>Region 2</b>					
AMR*	\$47,579,510	150	181	106	437
LC	\$61,669,435	115.75	193	114	423
MTM	\$66,412,437	107.45	157	106	370
SET	\$79,238,701	90.05	163	97	350
* AMR revised this amount to \$46,264,005 in negotiations, so difference would be \$15,405,430					
437 14 point difference from 2nd					
\$14,089,925 difference in price for yrs 1-3					

<b>Region 3</b>					
AMR**	\$47,883,537	150	180	106	436
LC	\$67,825,380	105.9	194	114	414
MTM	\$81,463,614	88.15	166	108	362
SET	\$89,822,739	79.95	69	99	248
** AMR revised this amount to \$46,581,911 in negotiations, so difference would be \$21,243,469					
436 22 point difference from 2nd					
\$19,941,843 difference in price for yrs 1-3					

# Revised Scoring w CO Price

Region 2	Bid Amount	Change Order	Bid Price Score (out of 150)	CO Revised Price			Total	CO Revised Total
				Score	Technical Score (out of 225)	Corp Exp. Score (out of 125)		
AMR*	\$47,579,510	\$58,225,014	150	150	181	106	437	437
LC	\$61,669,435		115.75	141.62	193	114	423	449
MTM	\$66,412,437		107.45	131.51	157	106	370	395
SET	\$79,238,701		90.05	110.22	163	97	350	370
*AMR revised this amount to \$46,264,005 in negotiations, so difference would be \$15,405,430								
Region 3								
AMR**	\$47,883,537	\$59,579,645	150	150	180	106	436	436
LC	\$67,825,380		105.9	131.76	194	114	414	440
MTM	\$81,463,614		88.15	109.70	166	108	362	384
SET	\$89,822,739		79.95	99.50	69	99	248	267
**AMR revised this amount to \$46,581,911 in negotiations, so difference would be \$21,243,469								

WITH THE CHANGE ORDER AMOUNT BEING USED -  
THE SCORING WOULD HAVE RESULTED IN LOGISTICARE BEING AWARDED REGIONS 2 AND 3

**Original Monthly Charges (does not include Implementation Costs) Award vs LC proposal**

		Year 1	Year 2	Year 3
AMR	Region 2	\$1,428,219.22	\$1,370,459.83	\$1,394,019.50
AMR	Region 3	\$1,438,033.22	\$1,379,876.83	\$1,403,598.67
		<u>\$2,866,252.44</u>	<u>\$2,750,336.67</u>	<u>\$2,797,618.17</u>

LC	Region 2	\$1,766,814.56	\$1,845,273.08	\$1,942,276.17
LC	Region 3	\$1,982,332.11	\$2,039,997.92	\$2,111,064.42
		<u>\$3,749,146.67</u>	<u>\$3,885,271.00</u>	<u>\$4,053,340.58</u>

Difference btw AMR & LC (\$882,894.22) (\$1,134,934.33) (\$1,255,722.42)

**CHANGE ORDER REQUEST BY AMR (increase to current monthly payment)**

	Year 1	Year 2	Year 3
Region 2	\$292,953.11	\$384,265.67	\$392,770.25
Region 3	\$318,622.89	\$417,549.75	\$1,083,144.50

**New AMR Monthly Charges if Change Order allowed**

	Year 1	Year 2	Year 3
Region 2	\$1,721,172.33	\$1,754,725.50	\$1,786,789.75
Region 3	\$1,756,656.11	\$1,797,426.58	\$2,486,743.17

**Difference btw Revised AMR & LC**

Region 2	(\$45,642.22)	(\$90,547.58)	(\$155,486.42)
Region 3	(\$225,676.00)	(\$242,571.33)	\$375,678.75



December 16, 2011

Ms. Melanie "BZ" Giese, RN  
Deputy Director, Medical and Managed Care Services  
South Carolina Department of Health & Human Services  
PO Box 8206  
1801 Main Street, J-1116  
Columbia, SC 29202

Re: Transition of the Non-Emergency Medical Transportation (NEMT) contract from Region II and III to another transportation broker

Dear Ms. Giese:

We are in receipt of the December 12, 2011 letter from State Procurement Officer John R. Stevens, CPPB, CPM, denying American Medical Response's (AMR) November 22, 2011 Change Order Request. As we have previously discussed with you and the South Carolina Department of Health and Human Services (SCDHHS) staff, one of the options included in our change order request, in the event our request for a change order was denied, was for AMR to work collaboratively with SCDHHS to conduct an orderly and timely transition of the brokerage services for Regions II and III to another contractor of SCDHHS' choosing. Given the fact that the State has denied AMR's change order request, and given the extreme economic consequences that AMR would suffer as a result of continuing to provide services without the benefit of the change order, it is necessary for AMR to work with the State on exercising this option.

Based upon our telephone conversation this past Wednesday morning, December 14th with you, Deirdra Singleton, Vicki Johnson and Zenovia Vaughn, with the consent of SCDHHS, AMR's sixty (60) day transition period will commence Monday, December 19, 2011, and will expire at 11:59 pm, Sunday February 19, 2012. As we explained during our telephone conversation this morning, AMR wishes to work collaboratively with SCDHHS to effectuate a smooth and orderly transition to a provider of the State's choosing. Attached please find our transition plan. AMR's point of contact during the transition will be Shawn Seewald.

AMR is genuinely sorry that our involvement with South Carolina's NEMT program is ending this way. While we do not agree with the State's decision not to grant AMR's change order request, we understand the need to have an expeditious, orderly transition to a new provider so that the members will not suffer disruption in service, there will be no confusion and the employees of AMR will have the opportunity to be employed by the new contractor, if it so chooses.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven G. Murphy". The signature is fluid and cursive, with the first name "Steven" and last name "Murphy" clearly distinguishable.

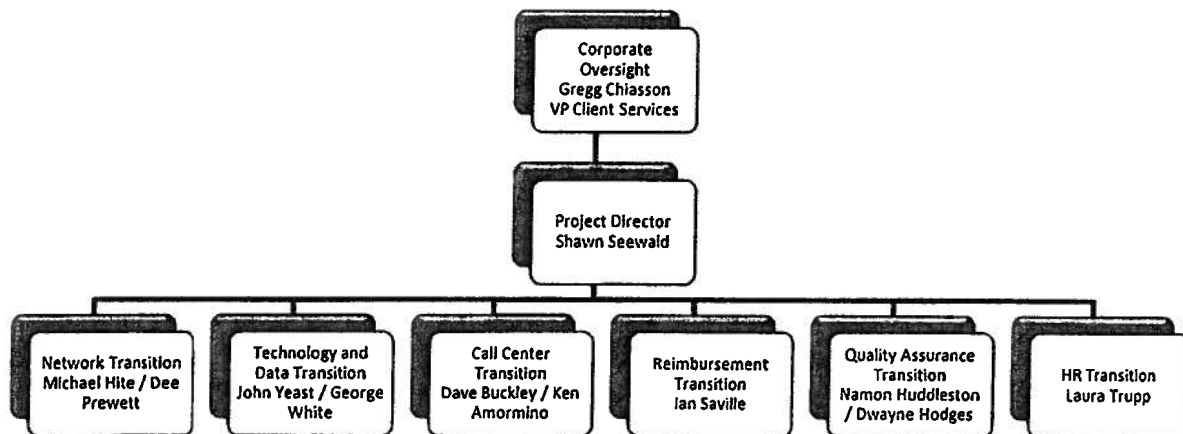
Steven G. Murphy  
Senior Vice President, Government and National Services

Cc: Deirdra Singleton, Esquire  
M. Elizabeth Crum, Esquire

## AMR / ACCESS2CARE TRANSITION PLAN NARRATIVE

AMR/Access2Care (A2C) understands the necessity to assist the state and / or the Successor broker (hereinafter referred to as Successor) as necessary in order to minimize disruption of the medical and non-medical transportation services to Medicaid members. We will work with the South Carolina Department of Health & Human Services (SCDHHS) and the designated Successor to ensure that all contractual requirements are met during the transition period and to turn over records and information in a manner that is deemed optimal for all parties on or before February 20, 2012.

The organizational chart below identifies the personnel that will be assigned to coordinate the transition of the South Carolina NEMT program to the Successor. Each staff member will have specific responsibilities associated with the elements of the transition plan assigned to them, represented by the chart below.



The tasks and sub-tasks in this turn-over plan are designed to ensure a thorough and complete transition process. This Transition Plan details the proposed schedule, activities, and resource requirements associated with the transition tasks outlined in the sections below.

The plan includes the following sections:

1. Transition Startup
2. Communication Plan
3. Technology/Call Center
4. Reporting and Record Retention
5. Accounting
6. Quality Management

As required, A2C will coordinate a planning meeting with the transition team members assigned by the SCDHHS, the Successor, and A2C. This team will review and determine any impact to the existing brokerage operation to ensure all aspects are properly addressed in the transition. This will allow us to confirm project scope and to identify any barriers to a successful program



transition. The planning meeting will also be the time to discuss and confirm project status reporting, contact information, time frames, and processes for any transition-related issue resolution.

### **1. Transition Startup**

This task will serve as the official kick-off of the transition phase of the contract. The draft Transition Plan will be reviewed and updated as necessary. The Transition Plan task assignments will be confirmed and updated as necessary.

### **2. Communication Plan**

The communication plan is broken into five sub-parts: human resources, transportation provider network, medical community, membership, and government officials. Necessary and required communications will occur with employees and temporary staffing agencies to provide details of the transition steps and timeframe. The transportation network will require notification of A2C's contract termination, billing expectations, payments, and transition to the Successor. The medical community will require notification of transition timeframes and expectations. Membership will require notification of transition and any changes to the contact or program requirements. Government officials will be contacted as needed to supply information regarding the transition.

### **3. Technology/Call Center**

The key functions necessary for the call center transition are as follows:

- Toll free numbers
- Scheduling and reservations
- TTY line

A2C will ensure all toll free numbers are properly transitioned to the Successor, if requested. The transition team will coordinate the appropriate timing of the transition, but in most cases it would be important that the calls begin to be answered by the Successor two weeks prior to the February 20, 2012 transition. A2C recommends that our IVR prompts be modified to allow the caller to select a different prompt for ordering trips with dates of service prior to February 20, 2012, and a different prompt for trips originating on or after February 20, 2012. When selecting the latter option, the calls will be routed to the Successor. This will allow for proper scheduling of trips that in most cases are scheduled days in advance. We will also ensure that the Successor receives a complete record of all trips residing within our system for dates of service on or after February 20, 2012. This will also allow for recurring trips to be properly transitioned.

TTY lines for the deaf and hearing impaired are also a key call center service that will be reviewed. A2C will ensure that the Successor will have the TTY number transferred to their operation, if desired, to provide TTY services for the population.

#### **4. Reporting and Record Retention**

To help provide a smooth transition of records, A2C will provide to the Successor with a file containing scheduled trips (as described above), the listing of all our contracted transportation providers, and their credentialing information. A2C will ensure the required long-term archiving of case management records, call recordings, and supporting documentation for complaints. The Turnover Results Report and all contractually required monthly reporting documents will be provided to SCDHHS.

#### **5. Accounting**

A2C will work to ensure the continued timely and accurate payment to the transportation providers through the transition period. A2C will also ensure that all internal financial adjudication and reporting processes are completed through the close-out of the contract.

#### **6. Quality Management**

The key components necessary for the transition of quality services are as follows:

- Completion of complaint investigation and reporting
- Ensuring compliance with all required performance standards

A2C's quality team will continue to monitor operational performance at the call center and with the provider network to ensure contractual compliance. Complaint Handlers will continue to manage complaints until all complaints received through the transition are resolved.

Throughout the previous sections of this plan, we have identified the proactive approach we will take regarding transition to a Successor. SCDHHS will already have direct access to our Project Director and will continue to have that access for the duration of the transition period. It is our intent to fully support this program through the transition period with the result of a seamless transition for all constituents and stakeholders.

ID	Task Name	Duration	Resource Names	Start	December	January	February	March	April	May	June
1	State of South Carolina Transition Plan	128 days?	Chasson	Tue 12/13/11	12/12/11	12/19/11	1/5/12	1/12/12	1/19/12	1/26/12	2/2/12
2	Contract Transition Period Commences	0 days	Chasson	Tue 12/13/11							
3	Deliverables	128 days?	Chasson	Wed 12/14/11							
4	Implementation Plan	2 days	Seewald	Thu 12/15/11							
5	Review Transition Plan	2 days	Chasson	Thu 12/15/11							
6	Update End-user Transition Plan	2 days	Seewald	Thu 12/15/11							
7	Transition Project Management	6 days?	Seewald	Fri 12/16/11							
8	Distribute Transition Plan	1 day	Seewald	Fri 12/16/11							
9	Meet and review plan with SCDHHS	1 day?	Seewald	Wed 12/21/11							
10	Finalize Contract Deliverable Dates	1 wk	Seewald, Chasson	Fri 12/16/11							
11	Assign Responsibility for Contract Deliverables	1 day	Chasson	Fri 12/16/11							
12	Internal Core Functions	128 days	Seewald	Wed 12/14/11							
13	Transition Communication Plan	73 days	Seewald	Wed 12/14/11							
14	AMR Staff - Human Resources	2 days	Seewald	Thu 12/15/11							
15	Contact Local Temp Agencies	1 day	Trupp	Fri 12/16/11							
16	Contact Local Management Staff	1 day	Seewald	Thu 12/15/11							
17	Contact Corporate Management	1 day	Chasson	Thu 12/15/11							
18	Contact Local Operations Staff	1 day	Seewald	Thu 12/15/11							
19	Transportation Providers - Network Management	69 days	Hile	Tue 12/20/11							
20	Develop and send out notifications	5 days	Buckley	Mon 1/2/12							
21	Cancel/Close contracts for SCDHHS services	60 days	Bracken, Seewald	Mon 1/2/12							
22	Send list of current transportation providers to SCDHHS	4 days	Hile	Tue 12/20/11							
23	Recover AMR Owned GPS devices from transportation providers	10 days	Seewald	Mon 2/5/12							
24	Medical Community	6 days	Stelle	Mon 1/2/12							
25	Send out notification to key medical providers	5 days	Stelle	Mon 1/2/12							
26	Recipient / Callers	35 days	Amorino	Mon 1/2/12							
27	Train CSRs in transition information	35 days	Huddleston	Mon 1/2/12							
Project: SC Transition Work Plan Date: Fri 12/16/11					<div><div>Task</div><div>Task Progress</div><div>Critical Task</div></div> <div><div>Critical Task Progress</div><div>Milestone</div><div>Summary</div></div> <div><div>Roll'd Up Task</div><div>Roll'd Up Critical Task</div><div>Roll'd Up Milestone</div></div> <div><div>Roll'd Up Progress</div><div>Sp1</div><div>External Tasks</div></div> <div><div>PTask</div><div>Task Progress</div><div>Critical Task</div></div>						
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Task Name		Duration	Resource Names	Start	December	January	February	March	April	May	June
ID					12/12/11	1/1/12	1/16/12	2/13/12	3/13/12	4/10/12	5/15/12
28	Educate callists	35 days	See above	Mon 12/12							
29	Legislative Notification	48 days	Chasson	Wed 12/14/11							
30	Coordinate with Lobbyist on as needed basis	48 days	Chasson	Wed 12/14/11							
31	Technology/Call Center	44 days	Yeast	Mon 1/2/12							
32	Develop telephony transition plan	5 days	Yeast	Mon 1/2/12							
33	Submit Telephony transition plan to SCDHHS for approval	5 days	Yeast	Mon 1/9/12							
34	Modify IVR script consistent with approved plan	3 days	Huddleston	Mon 1/2/12							
35	Finalize transition from existing facility	9 days	Buckley	Mon 2/20/12							
36	Computer equipment	8 days	Buckley	Mon 2/20/12							
37	Office equipment	8 days	Buckley	Mon 2/20/12							
38	Telephone equipment	8 days	Buckley	Mon 2/20/12							
39	T1 Circuits	8 days	Buckley	Mon 2/20/12							
40	Generator	8 days	Buckley	Mon 2/20/12							
41	Security equipment	9 days	Buckley	Mon 2/20/12							
42	Cancel/Transfer Lease & Utilities	1 day	Bracken	Tue 2/1/12							
43	Train additional temporary staff to offset CSR attrition	35 days	Amorino	Mon 1/2/12							
44	Reporting and Record Retention	55 days	Amorino	Mon 1/16/12							
45	Transfer all scheduled trips to SCDHHS	1 day	Amorino	Mon 1/16/12							
46	Transfer all scheduled trips to SCDHHS (Round 2)	1 day	Amorino	Fri 2/17/12							
47	Transfer & archive transportation provider records	8 days	Amorino	Tue 2/21/12							
48	Archive case management records	8 days	Amorino	Tue 2/21/12							
49	Archive call recordings	8 days	Amorino	Tue 2/21/12							
50	Archive supporting documentation for complaints	8 days	Amorino	Tue 2/21/12							
51	Develop/Submit Turnover Results Report	8 days	Amorino	Tue 2/21/12							
52	Develop/Submit final reporting documents for SCDHHS	10 days	See above	Mon 5/14/12							
53	Accounting	10 days	See above	Mon 5/14/12							
54	Ensure prompt payment practices	118 days	Argenzio	Mon 1/2/12							
		95 days	See above	Mon 1/2/12							
<div> <div>Task</div> <div>Task Progress</div> <div>Critical Task</div> </div> <div> <div>Critical Task Progress</div> <div>Milestone</div> <div>Summary</div> </div> <div> <div>Rel'd Up Task</div> <div>Rel'd Up Critical Task</div> <div>Rel'd Up Milestone</div> </div> <div> <div>Raised Up Progress</div> <div>Spcl</div> <div>External Tasks</div> </div> <div> <div>P Task</div> <div>Task Progress</div> <div>Critical Task</div> </div>				<div> <div>Project: SC Transition Work Plan</div> <div>Date: Fri 12/16/11</div> </div>							

ID	Task Name	Duration	Resource Names	Start	December	January	February	March	April	May	June
55	Adjudicate final transportation provider claims	60 days	Secord	Mon 2/20/12	1/2 1/25 2/1 2/1 2/2 1/2 1/8 1/16 1/23 1/30 2/6 2/13 2/20 2/27 3/6 3/13 3/20 3/27 4/3 4/10 4/17 4/24 5/1 5/8 5/15 5/22 5/29 6/5 6/12 6/19 6/26						
56	Close South Carolina accounts receivable ledgers	5 days	Argento	Mon 5/28/12							
57	Receive final payment from South Carolina	5 days	Argento	Mon 6/4/12							
58	Quality Management	35 days	Huddleston	Mon 1/2/12							
59	Close out all complaints	35 days	Hodges	Mon 1/2/12							
60	Ensure contract compliance during transition period	35 days	Hodges	Mon 1/2/12							

Task

Task Progress

Critical Task

Critical Task Progress

Milestones

Summary

Roll Up Task

Roll Up Critical Task

Roll Up Milestone

Roll Up Progress

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External Tasks

PTask

Task Progress

Critical Task

Task

Task Progress

Critical Task

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January 12, 2012

ALL

## MEDICAID BULLETIN

**TO: All Providers**

**SUBJECT: South Carolina Non-Emergency Medical Transportation (NEMT)**

American Medical Response, Incorporated, operating as Access2Care in South Carolina, has terminated their contract with South Carolina Department of Health and Human Services (SCDHHS) for the Non-Emergency Medical Transportation Program (NEMT). Effective December 22, 2011, Access2Care began its 60-day transition plan to exit the state by February 21, 2012.

Effective February 21, 2012, LogistiCare Solutions, LLC will begin covering the two (2) regions currently operated by Access2Care. At that time LogistiCare will be responsible for all three (3) NEMT regions in the state. During the 60-day transition period, transportation providers are expected to perform business as usual. SCDHHS is monitoring activities to ensure a smooth transition with no disruption to the current level of services being rendered.

A second Medicaid Bulletin will be released that includes contact information and the website address for LogistiCare. In the interim, if you have any questions about the NEMT Program please continue to address those concerns with your current broker or with the staff at SCDHHS.

If you have any additional questions or concerns regarding this bulletin, they should be directed to the Office of Hospitals and Durable Medical Equipment at (803) 898-2665. Thank you for your continued support in the South Carolina Healthy Connections program.

/s/  
Anthony E. Keck  
Director

